

R E M A R K S

A. INTRODUCTION

Claims 1-3, 6, 7, and 9-26 are pending and rejected.

Upon entry of this Amendment:

- Claims 1, 6, 7, 9, and 11-26 will be pending
- Claims 1, 9, 11, and 14 will be amended
- Claims 2, 3, and 10 will be cancelled without prejudice
- Claims 1, 6, 7, and 9 will be the only independent claims

B. OBJECTIONS TO CLAIMS 6 AND 7

We are very grateful for the Examiner's additional explanation of the objection of Claims 6 and 7. As we understand it, the basis for the Examiner's objection to Claims 6 and 7 appears to be the fact that each of Claims 6 and 7 has an explicit reference to the entire subject matter of another claim (e.g., Claim 1). From this the Examiner assumes that the claims are in "dependent form," and more specifically, assumes from this that such claims could not be in proper independent form.

We respectfully submit that mere reference to another claim is not a sufficient basis on which to conclude that Claims 6 and 7 are not in proper independent claim form. In fact, Claims 6 and 7 satisfy the Examiner's own examples of proper independent claims.

For instance, as the Examiner explains, a product claim could refer to another independent method claim (and therefore incorporate all of the limitations of that other claim). The product claim would properly be considered an independent claim (not an "improper dependent claim"). As the Examiner also explains, such a product claim cannot be a dependent claim (and must accordingly be a proper independent claim) because it could conceivably be infringed by something that would not also infringe the method claim to which it refers. [Office Action, page 2]. Accordingly, there is nothing improper per se about an independent claim that refers to another independent claim.

Similarly, Claim 6 could conceivably be infringed by something (a device comprising a processor configured to perform but not necessarily performing the method of Claim 1) that would not also infringe the method of Claim 1 to which it refers. Similarly, Claim 7 could conceivably be infringed by something (a medium storing instructions to be executed by a processor to perform but not necessarily

performing the method of claim 1) that would not also infringe the method of Claim 1 to which it refers.

We respectfully request reconsideration and withdrawal of the objection to Claims 6 and 7.

C. SECTION 103(A) REJECTIONS

Claims 1, 2, 6, 7, and 12-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Katz (U.S. Patent No. 6055513), and further in view of Bieganski (U.S. Patent No. 6412012).

Claims 3, 9, 10 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Katz and Bieganski and assertions that are not supported by actual evidence of record.

We respectfully traverse the Examiner's Section 103(a) rejection.

Claims 2, 3, and 10 have been cancelled without prejudice by this Amendment. We intend to pursue the subject matter of the cancelled claims in one or more continuing applications.

Claim 1 has been amended to recite a feature in which determining an offer for the customer is based on a round-up amount and at least one of a genetic program and a genetic algorithm. Claim 9 has been amended to recite an independent claim in which determining an offer for the customer is based on a calculated difference between a transaction total and a next highest dollar amount. The Examiner asserts that it was well known

in yard sells and garage sells for someone to offer an item for less price based on the amount of change, when the seller does not have enough change to give back to the customer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the upsell of Katz based on the amount of change since the customer would be motivated to buy the item for less and would be willing to give up his/her change.

[Office Action, page 5].

We respectfully traverse the Examiner's unsupported assertion of what was well known, at least because the Examiner has not been able to provide any tangible, objective evidence of record in support of this assessment of the prior art. The Examiner has not provided any evidence of record that offering an item at a yard sale for a lower price, based on the amount of change, was actually known prior to the earliest effective date for our claims the subject matter of Claim 1. As we cannot assess the scope of what is being asserted, evaluate the Examiner's interpretation of any evidence, discern the time at which the asserted subject matter

was known, or determine the objective source of this knowledge, we must traverse the Examiner's unsupported assertion. We respectfully request that the Examiner provide evidence that the asserted subject matter was known (e.g., a publication) or provide an affidavit attesting to the Examiner's personal knowledge.

We also submit that even if the asserted subject matter was known, nothing in the Examiner's assertion teaches or suggests it would be desirable to both determine order information and determine an offer based on a round-up amount or a calculated difference. For example, the Examiner refers to a seller at a yard sale selling an item for less, but the asserted subject matter does not suggest determining an offer based on a round-up amount or calculated difference. Rather, the Examiner's scenario seems to relate to a situation in which a buyer brings up an item to purchase and the seller discounts that item because he cannot make change. Accordingly, the Examiner's scenario does not appear to have anything to do with upsells or suggestive selling.

We also submit that even if the asserted subject matter was known, there is no motivation to modify the Katz system in the manner proposed by the Examiner. Specifically, as explained in our previous Response, as Katz is directed to "remote commerce" there is no problem in Katz related to change, and thus the asserted modification is not desirable for the Katz system.

Accordingly, we submit that independent Claims 1, 6, 7, and 9 (and all the dependent claims) contain allowable subject matter. We respectfully request the Examiner reconsider and withdraw the Section 103(a) rejections.

D. ADDITIONAL COMMENTS

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, or the Examiner's interpretation of claimed subject matter, is not to be understood as agreement with the Examiner. As the Examiner has not established an unrefutable *prima facie* case of obviousness for any of the pending claims, for the reasons stated in this paper, we need not address the Examiner's other assertions at this time.

E. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We do not believe that any fees are necessary for this response.

Please grant a petition for any extension of time required to make this Response timely.

Deposit Account: 50-0271

Order No.: 00-106

Please charge any appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to Deposit Account 50-0271. Please credit any overpayment to the same account.

F. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's reconsideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

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Date

/Michael Downs 50252/
Michael Downs
Attorney for Applicants
Registration No. 50,252
mdowns@walkerdigital.com
(203) 461-7292 /voice
(203) 461-7300 /fax